The question in the principal case is a nice one; but it seems that the dissent is the better law. Does the charge "former variety actress" necessarily bring the plaintiff into hatred, ridicule, or contempt? Is damage so conclusively a result that the court can say as a matter of law that the imputation is of itself an injury? It is difficult to reconcile the holding of the majority with *Hemmens* v. *Nelson*, 138 N. Y. 518, where the publication "she entertained gentlemen company at all hours of the night" was held not actionable *per se*. The New York court might well have said in the present case that special damage was necessary, for the step taken in holding this charge libellous *per se* is one that a court can ill afford to take. It may tend to open the way to the frivolous libel suits to-day so serious a problem in England. The court cannot take notice of the various and ever-changing codes by which social position is gained and lost. The action is a protection of character, not of conceit.

CURIOSITIES OF REPORTING. — These citations, received from a Boston lawyer, show the prevailing errors, and the need of reform, in our present reporting system: —

"The following head-note appears in *Stone* v. *United States*, 167 U. S. 178: —

"'The ruling of the court about the challenges are without merit.'

"From an examination of the case we infer that the reporter meant to say: 'The *objection* to the ruling of the court about challenges *is* without merit.' But when these verbal infelicities are corrected, the head-note still fails to show what the ruling was, except that it was 'about challenges.' The mystery is intensified when we find the note repeated in the index under the title 'Evidence.'

"The following head-note has a fine Hibernian flavor: —

"'A consignee of goods sent C. O. D. cannot maintain replevin against the carrier before payment and *delivery*.' *Lane* v. *Chadwick*, 146 Mass. 68.

"The implication is that if a man would bring replevin he must first get possession of his goods."

GREAT AMERICAN JUDGES. — UNITED STATES SUPREME COURT. — John Marshall was a tall, gaunt man with black hair, whose piercing black eyes seemed almost at variance with the expression of his face, brimful of simple and trusting kindness which touched the hearts even of political enemies. Chief Justice Marshall is believed by many to have been the greatest man who has sat upon the bench of the Supreme Court of the United States; but his greatness as a judge would hardly have been suspected by one who could have seen him, an old man among young men, throwing quoits at his home in Virginia. Harriet Martineau compared his disposition to that of "Uncle Toby." By nature modest, retiring, and a little uncouth, his bearing on the bench had nevertheless a certain indefinable dignity. His speech was simple, halting at first and measured, but gaining vigor as the argument progressed, enforcing conviction upon his hearers by the keenness of his logic, which cut aside irrelevant matters and lay open in its true bearings the single point at issue. His opinions were terse and cogent, written in a vehement style well chosen to present

the infallible logic of his reasoning. Marshall was not a scholar of the common law; his early studies were cut short by his active campaigning in the Revolutionary War. His mind was of the kind that reasons out a system for itself. For expounding international law he received training when Minister to France at the time of the X Y Z letters, when member of Congress, and later when Secretary of State to President Adams. For creating the constitutional law of the nation he had the best possible preparation in supporting the Constitution at the convention of his native State, and in defending the policy of the first administrations. His opportunity as Chief Justice to form the constitutional law of the land was unparalleled, and he performed the task ably. The power of the Supreme Court to revise the decisions of State courts, the power of Congress to establish a national bank, the exemption of the machinery of Federal government from State taxation, — these are but a few of the many fundamental questions which came before him to be decided for the first time. His principle was that of neither broad nor narrow construction; he strove simply to give to the words of the Constitution the meaning which all the surrounding circumstances showed to be the obvious one. In deciding the meaning he could but choose the meaning obvious to himself, that is, to a man imbued with the strongest federalist convictions in favor of a centralized government. His positions seem to us at times forced or pedantic; and yet it is hard to see how a man of strong convictions could have avoided his failing. His service was in creating a strong national government in the face of jealous States, when a strong government was sorely needed.

Closely associated with Marshall in his judicial life, although some years his junior, was a New England man, Joseph Story. He was born at Marblehead, on the Massachusetts coast, and grew up with a passion for the sea, the impetuous, emotional, and mystery-loving temperament which draws its breath from the ocean. He was a handsome man, well-dressed, a fluent and cultivated talker, one of those who would be singled out among a roomful as a leader of men. Story graduated with high honors at Harvard College, became member of the State legislature, and later of Congress. His life, however, was mainly given to legal study, and he was pre-eminently fitted for the position on the Supreme Bench of the United States to which he was appointed by President Jefferson in 1811. He was a scholar; the Year Books were his friends, and the old English Chancery Reports his companions. Constitutional law he learned from Marshall, in spite of the fact that he was a Republican in politics; but international law and the law of Admiralty and Prize Courts he made his own; and with Chancellor Kent he shares the credit of having originated equity practice in America. He was a bitter enemy of slavery; and his addresses to the grand juries in condemnation of the slave trade were influential in stamping out the last traces of slavery in New England. In 1829 he received the appointment as Dane Professor of Law at Harvard University. There he lectured without notes, for his immense store of knowledge was always at his command; often he would talk for an hour on a point which it had not occurred to him beforehand to mention. The lectures were popular, always suggestive, often impressive Beside these labors, Story was an indefatigable writer, his works showing great learning, and seldom being open to the imputation of error or inaccuracy to which the impulsive mind of the writer might have led. His writings have the merit, rare in law books or judicial opinions, of having a literary style.

The style is clear and flowing, drawing illustrations from the sources to which the author's scholarship gave him access. It is in striking contrast with Marshall's intensely focussed style; but it is none the less clear, and it has a richness which Marshall's lacks. The books have laid the foundations of an international reputation; and it was owing to them that Lord Campbell in the House of Lords in 1847 spoke of Story as "greater than any law writer of which England could boast, or which she could bring forward since the days of Blackstone."

RECENT CASES.

BILLS AND NOTES — ALTERATION — ESTOPPEL BY NEGLIGENCE. — H desiring to borrow money through her agent, signed a note for $500, written with a lead pencil. The agent raised the note to $1,200, and sold it for that amount to plaintiff, a *bona fide* purchaser. *Held*, that H is liable for $500 only. *Walsh* v. *Hunt*, 52 Pac. Rep. 115 (Cal., Sup. Ct.).

This case must be added to the increasing line of cases *contra* to the doctrine of *Young* v. *Grote*, 4 Bing. 253, that one who facilitates, by careless execution, the alteration of a negotiable instrument is liable to an innocent purchaser for the amount of the instrument in its altered form. This doctrine, which rests upon estoppel by negligence, appears to be the better view, and more consistent with the conception of a negotiable instrument. These instruments are intended to pass freely from hand to hand, and the principal case tends to interfere with their free circulation. See 10 HARV. LAW REV. 185.

BILLS AND NOTES — CONDITIONAL DELIVERY. — The maker of a note delivered it to the payee's agent on condition that it was not to take effect until signed by X, but the latter's signature was never obtained. *Held*, that these facts cannot be set up in defence in an action by the payee against the maker. *Hurt* v. *Ford*, 44 S. W. Rep. 228 (Mo.).

There is an almost hopeless conflict of authority as to whether there can be a conditional delivery of a note to the payee or his agent. Some courts have followed the strict rule as to deeds, that delivery in escrow can be made only to a stranger, while others have reached the same result by applying the parol evidence rule. *Stewart* v *Anderson*, 59 Ind. 375; *Mossman* v. *Holscher*, 49 Mo. 87. In England and in most of the jurisdictions in this country in which the question has arisen the courts have consistently applied to negotiable instruments the doctrine of *Pym* v. *Campbell*, 6 E. & B. 370, that the parol evidence in such a case does not tend to vary an existing written contract, but shows that no contract ever existed unless the contingency occurred upon which it was to take effect, and that therefore the parol evidence rule has no application. The old rule as to deeds is technical and should not be extended. *Merchants, etc. Bank* v. *Luckow*, 37 Minn. 542; *Alexander* v. *Walker*, 11 Lea, 221; *Burke* v. *Dulaney*, 153 U. S. 228. Of course if the note has come into the hands of a *bona fide* purchaser, the maker should be estopped to deny a valid delivery to the payee.

BILLS AND NOTES — CHECKS — REFUSAL OF PAYMENT. — A check was drawn on a bank where there were not sufficient funds to meet it. The drawer ordered payment stopped, but later increased his deposit above the amount of the check. *Held*, that the bank is liable to the holder for a subsequent refusal to honor although the order of the drawer had not been countermanded. A bank upon receipt of a deposit agrees "with the whole world" to honor presented checks if there are sufficient funds, and a secret understanding with the depositor is no defence to the holder's rights. *Gage Hotel Co.* v. *Union Nat. Bank*, 49 N. E. Rep. 420 (Ill.).

The Illinois cases have affirmed the right of a check-holder to compel payment by a bank on two grounds: first, that a check is an assignment *pro tanto* of the deposit; see 11 HARV. LAW REV. 548 for an adverse criticism of a late Illinois case taking this view; second, the ground of "implied contract" taken in the principal case. A check is an assignment when drawn, if at all. Since at that time there were not sufficient funds to meet it, the principal case, if sound, must be rested on the theory of "implied con-